

# **CUSTOMS BULLETIN AND DECISIONS**

**Weekly Compilation of**

**Decisions, Rulings, Regulations, Notices, and Abstracts**

**Concerning Customs and Related Matters of the**

**U.S. Customs Service**

**U.S. Court of Appeals for the Federal Circuit**

**and**

**U.S. Court of International Trade**

**VOL. 33**

**DECEMBER 15, 1999**

**NO. 50**

*This issue contains:*

U.S. Customs Service

T.D. 99-87 Through 99-90

General Notices

**DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE**

## NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

**Please visit the U.S. Customs Web at:  
<http://www.customs.gov>**

# U.S. Customs Service

## *Treasury Decisions*

19 CFR Parts 132 and 163

(T.D. 99-87)

RIN 1515-AC54

### EXPORT CERTIFICATES FOR LAMB MEAT SUBJECT TO TARIFF-RATE QUOTA

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim rule; solicitation of comments.

SUMMARY: This document amends the Customs Regulations on an interim basis to set forth the form and manner by which an importer establishes that a valid export certificate is in effect for certain fresh, chilled or frozen lamb meat that is the subject of a tariff-rate quota, and the product of a participating country, as defined in interim regulations of the United States Trade Representative (USTR). The export certificate is necessary in this regard in order to enable the importer to claim the in-quota rate of duty on the lamb meat.

DATES: Interim rule effective December 2, 1999. This interim rule is applicable to all products entered or withdrawn from warehouse for consumption on or after December 2, 1999. Comments must be received on or before January 31, 2000.

ADDRESSES: Written comments may be addressed to and inspected at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Cynthia Porter, Office of Field Operations, (202-927-5399).

#### SUPPLEMENTARY INFORMATION:

##### BACKGROUND

By Presidential Proclamation No. 7208 dated July 7, 1999, as modified by Presidential Proclamation No. 7214 of July 30, 1999, the President, acting under the authority of section 203 of the Trade Act of 1974

(19 U.S.C. 2253), established a tariff-rate quota with respect to certain fresh, chilled or frozen lamb meat exported to the United States on or after July 22, 1999.

Under a tariff-rate quota, the United States applies one tariff rate, known as the in-quota tariff rate, to imports of a product up to a particular amount, known as the in-quota quantity, and another, higher rate, known as the over-quota rate, to imports of a product in excess of the given amount. The preferential, in-quota tariff rate would be applicable only to the extent that the aggregate in-quota quantity of a product allocated to a country had not been exceeded.

It is noted that the tariff-rate quota on lamb meat was established in response to a determination by the U.S. International Trade Commission under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) that lamb meat was being imported into the United States in such increased quantities as to substantially threaten serious injury to the domestic lamb meat industry. The tariff-rate quota is temporary in duration, being established for a period of three years and one day. It is intended to help facilitate efforts during this period by the domestic lamb meat industry to adjust to the increased import competition.

Specifically, the lamb meat covered by the tariff-rate quota consists of fresh, chilled or frozen lamb meat that is classified in subheading 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00, 0204.42.20, or 0204.43.20 of the Harmonized Tariff Schedule of the United States (HTSUS). In order to implement the tariff-rate quota for the described lamb meat, Presidential Proclamation No. 7208 amended subchapter III of Chapter 99, HTSUS, so as to list the in-quota quantities of lamb meat allocated to those countries covered by the tariff-rate quota, together with the in-quota and over-quota rates of duty applicable to the lamb meat.

Under Presidential Proclamation No. 7214, the United States Trade Representative (USTR) was given authority to administer the tariff-rate quota on the imported lamb meat.

As part of the implementation of this tariff-rate quota, the USTR is offering exporting countries that have an allocation of the in-quota quantity the opportunity to use export certificates for their lamb meat exports to the United States. While a country does not need to participate in the export-certificate program in order to receive the in-quota tariff rate for its share of the in-quota quantity, using export certificates assures an exporting country that only those exports that it intends for the United States market are counted against its in-quota allocation, and it helps ensure that such imports do not disrupt the orderly marketing of lamb meat in the United States.

The USTR has issued an interim rule establishing regulations for this export-certificate program (15 CFR part 2014) (64 FR 56429; October 20, 1999). To this end, an exporting country wishing to participate in the export-certificate program must notify the USTR and provide the necessary supporting information. As defined in the USTR interim reg-

ulations (15 CFR 201.2(c)), a participating country is a country that has received an allocation of the in-quota quantity of the tariff-rate quota, and that the USTR has determined, and has so informed Customs, is eligible to use export certificates for their lamb meat products exported to the United States. The USTR has stated that it intends to publish a notice in the Federal Register whenever a country becomes, or ceases to be, a participating country. In this connection, Australia and New Zealand have already requested, and have been approved by USTR, to use export certificates for their lamb meat that is exported to the United States, as noted in the USTR interim rule.

In accordance with the interim rulemaking of the USTR, Customs is issuing this interim rule in order to set forth a new § 132.16, Customs Regulations (19 CFR 132.16), that prescribes the form and manner by which an importer establishes that a valid export certificate exists, including a unique number for the certificate that must be referenced on the entry or withdrawal from warehouse for consumption. This will ensure that no imports of the specified lamb meat products of a participating country are counted against the country's in-quota allocation unless the products are covered by a proper export certificate. The export certificate is necessary in this regard in order to enable the importer to claim the in-quota rate of duty on the lamb meat.

In addition, the Interim (a)(1)(A) List set forth as an Appendix to part 163, Customs Regulations (19 CFR part 163, Appendix), that lists the records required for the entry of merchandise, is revised to make reference to the requirement in § 132.15, Customs Regulations (19 CFR 132.15) and in new § 132.16, Customs Regulations (19 CFR 132.16), that an importer possess a valid export certificate, respectively, for beef or lamb meat subject to a tariff-rate quota and that is a product of a participating country, in order for the importer to be able to claim the applicable in-quota rate of duty.

#### COMMENTS

Before adopting this interim regulation as a final rule, consideration will be given to any written comments that are timely submitted to Customs. Customs specifically requests comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, 3rd Floor, Washington D.C.

#### INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE REQUIREMENTS, THE REGULATORY FLEXIBILITY ACT, AND EXECUTIVE ORDER 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to this interim rule because it is within the foreign affairs function of the United States. Also, for the above reason, there is no need for a delayed effective date under 5 U.S.C. 553(d). Because no notice of pro-

posed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply; and because this document involves a foreign affairs function of the United States, it is not subject to the provisions of E.O. 12866.

#### PAPERWORK REDUCTION ACT

The collections of information involved in this interim rule have already been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and assigned OMB Control Numbers 1515-0065 (Entry summary and continuation sheet) and 1515-0214 (General recordkeeping and record production requirements). This rule does not propose any substantive changes to the existing approved information collections.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

#### LIST OF SUBJECTS

##### 19 CFR Part 132

Agriculture and agricultural products, Customs duties and inspection, Quotas, Reporting and recordkeeping requirements.

##### 19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

#### AMENDMENT TO THE REGULATIONS

Accordingly, parts 132 and 163, Customs Regulations (19 CFR parts 132 and 163), are amended as set forth below.

#### PART 132—QUOTAS

1. The general authority citation for part 132 continues to read as follows, and the specific sectional authority under this part is revised to read as follows:

**Authority:** 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1623, 1624.

§§ 132.15 and 132.16 also issued under 19 U.S.C. 1202 (additional U.S. Note 3 to Chapter 2, HTSUS; and subchapter III of Chapter 99, HTSUS, respectively), 1484, 1508.

2. Section 132.15 is amended by removing from paragraph (c)(1) the parenthetical, "(see § 162.1c of this chapter)", and by adding, in its place, the parenthetical, "(see § 163.4(a) of this chapter)".

3. Part 132 is amended by adding a new § 132.16 to read as follows:

##### **§ 132.16 Export certificate for lamb meat subject to tariff-rate quota.**

(a) *Requirement.* For fresh, chilled or frozen lamb meat classified in HTSUS subheading 0204.10.00, 0204.22.20, 0204.23.20, 0204.30.00,

0204.42.20, or 0204.43.20, that is the subject of a tariff-rate quota as provided in subchapter III of Chapter 99, HTSUS, and that is the product of a participating country, as defined in 15 CFR 2014.2(c), the importer must possess a valid export certificate in order to claim the in-quota tariff rate of duty on the lamb meat at the time it is entered or withdrawn from warehouse for consumption. The importer must record the distinct and unique identifying number of the export certificate for the lamb meat on the entry summary or warehouse withdrawal for consumption (Customs Form 7501, column 34), or its electronic equivalent.

(b) *Validity of export certificate.* To be valid, the export certificate must meet the requirements of 15 CFR 2014.3(b), and with respect to the requirement of 15 CFR 2014.3(b)(3), the export certificate covering the lamb meat must have a distinctly and uniquely identifiable number.

(c) *Retention and production of certificate to Customs.* The export certificate is subject to the recordkeeping requirements of part 163 of this chapter (19 CFR part 163). Specifically, the certificate must be retained for a period of 5 years in accordance with § 163.4(a) of this chapter, and must be made available to Customs upon request in accordance with § 163.6(a) of this chapter.

#### PART 163—RECORDKEEPING

1. The authority citation for part 163 continues to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. In the Appendix to part 163, under heading "IV," the list of documents/records or information required for entry of special categories of merchandise is revised by adding the following in appropriate numerical order:

**"§§ 132.15, 132.16 Export certificates, respectively, for beef or lamb meat subject to tariff-rate quota".**

RAYMOND W. KELLY,  
*Commissioner of Customs.*

Approved: November 18, 1999.

JOHN P. SIMPSON,

*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, December 2, 1999 (64 FR 67482)]

## 19 CFR Part 12

(T.D. 99-88)

RIN 1515-AC52

**IMPORT RESTRICTIONS IMPOSED ON CERTAIN KHMER  
STONE ARCHAEOLOGICAL MATERIAL OF THE KINGDOM OF  
CAMBODIA****AGENCY:** U.S. Customs Service, Department of the Treasury.**ACTION:** Final rule.

**SUMMARY:** This document amends the Customs Regulations by imposing emergency import restrictions on certain Khmer stone archaeological material of the Kingdom of Cambodia of the 6th century through the 16th century A.D. These restrictions are being imposed pursuant to a determination of the United States Information Agency issued under the terms of the Convention on Cultural Property Implementation Act in accordance with the United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property. The document contains the Designated List describing the Khmer stone archaeological material of the Kingdom of Cambodia to which the restrictions apply.

**EFFECTIVE DATE:** December 2, 1999.

**FOR FURTHER INFORMATION CONTACT:** (Legal Aspects) Michael L. Smith, Intellectual Property Rights Branch (202) 927-1996; (Operational Aspects) Joan E. Sebenaler, Trade Programs (202) 927-0402.

**SUPPLEMENTARY INFORMATION:****BACKGROUND**

The value of cultural property, whether archaeological or ethnological in nature, is immeasurable. Such items often constitute the very essence of a society and convey important information concerning a people's origin, history, and traditional setting. The importance and popularity of such items regrettably makes them targets of theft, encourages clandestine looting of archaeological sites, and results in their illegal export and import.

The U.S. shares in the international concern for the need to protect endangered cultural property. The appearance in the U.S. of stolen or illegally exported artifacts from other countries where there has been pillage has, on occasion, strained our foreign and cultural relations. This situation, combined with the concerns of museum, archaeological, and scholarly communities, was recognized by the President and Con-



gress. It became apparent that it was in the national interest for the U.S. to join with other countries to control illegal trafficking of such articles in international commerce.

The U.S. joined international efforts and actively participated in deliberations resulting in the 1970 UNESCO Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property (823 U.N.T.S. 231 (1972)). U.S. acceptance of the 1970 UNESCO Convention was codified into U.S. law as the "Convention on Cultural Property Implementation Act" (Pub.L. 97-446, 19 U.S.C. 2601 *et seq.*) ("the Act"). This was done to promote U.S. leadership in achieving greater international cooperation towards preserving cultural treasures that are of importance to the nations from where they originate and to achieving greater international understanding of mankind's common heritage.

During the past several years, import restrictions have been imposed on archaeological and ethnological artifacts of a number of signatory nations. These restrictions have been imposed as a result of requests received from those nations under Article 9 of the 1970 Convention and pursuant to provisions of the Convention on Cultural Property Implementation Act that allow for emergency action and bilateral agreements between the United States and other countries.

This document amends the regulations by imposing emergency import restrictions on certain archaeological artifacts from Cambodia as described below.

#### CAMBODIA

Under § 303(a)(3) of the Cultural Property Implementation Act (19 U.S.C. 2602(a)(3)), Cambodia, a State Party to the 1970 UNESCO Convention, asked the U.S. Government to impose import restrictions on certain categories of archaeological and/or ethnological material the pillage of which, it was alleged, jeopardizes the national cultural patrimony of Cambodia. Notice of receipt of this request was published by the United States Information Agency (USIA) in the Federal Register (64 FR 28873) on May 27, 1999.

The request was forwarded to the Cultural Property Advisory Committee, which conducted a review and investigation and submitted its report in accordance with the provisions of 19 U.S.C. 2605(f) to the Associate Director for Educational and Cultural Affairs, USIA. Pursuant to the provisions of 19 U.S.C. 2603(a)(3), the Committee found, with respect to a certain category of archaeological material, the situation in Cambodia to be an emergency, and recommended that emergency import restrictions be imposed on certain Khmer stone archaeological material from Cambodia. The Associate Director, pursuant to the authority vested in him under Executive Order 12555 and USIA Delegation Order 99-4, considered the Committee's recommendations and on September 29, 1999, the Associate Director made the determination that emergency import restrictions be applied.

The Commissioner of Customs, in consultation with the Associate Director of the USIA, has developed a list of types of covered Khmer stone archaeological material of the 6th century through the 16th century A.D. from Cambodia. The materials on this list are subject to § 12.104a(b), Customs Regulations (19 CFR 12.104a(b)). As provided in 19 U.S.C. 2601 *et seq.*, and § 12.104a(b), Customs Regulations, listed materials from this area may not be imported into the U.S. unless accompanied by documentation certifying that the material left Cambodia legally and not in violation of the laws of Cambodia.

In the event an importer cannot produce the certificate, documentation, or other evidence required by § 12.104c, Customs Regulations (19 CFR 12.104c) at the time of making entry, § 12.104d, Customs Regulations (19 CFR 12.104d) provides that the port director shall take custody of the material until the certificate, documentation, or evidence is presented. Section 12.104e provides that if the importer states in writing that he will not attempt to secure the required certificate, documentation, or evidence, or the importer does not present the required certificate, documentation, or evidence to Customs within the time provided, the material shall be seized and summarily forfeited to the U.S. in accordance with the provisions of Part 162, Customs Regulations (19 CFR Part 162).

The list of archaeological material from Cambodia for which import restrictions apply is set forth below.

LIST OF KHMER STONE ARCHAEOLOGICAL MATERIAL OF THE  
6TH CENTURY THROUGH THE 16TH CENTURY A.D. FROM CAMBODIA

Khmer stone archaeological material of the 6th century through the 16th century A.D. from Cambodia, includes the categories listed below. The following list is representative only.

STONE

This category consists largely of materials made of sandstone, including many color shades (grey to greenish to black, pink to red and violet, some yellowish tones) and varying granulosity. Due to oxidation and iron content, the stone surface can become hard and take on a different color than the stone core. These surface colors range from yellowish to brownish to different shades of grey. This dense surface can be polished. Some statues and reliefs are coated with a kind of clear shellac or lacquer of different colors (black, red, gold, yellow, and/or brown). The surface of sandstone pieces can also, however, be quite rough. Chipped surfaces can be white in color. In the absence of any systematic technical analysis of ancient Khmer stonework, no exact description of other stone types can be provided. It is clear, however, that other types of stone were also used (some volcanic rock, rhyolite and schist, *etc.*), but these are nonetheless exceptional. Some quartz objects are also known. Precious and semi-precious stones were also used as applied decor or in jewelry settings.

Different types of stone degradation can be noted. Eroded surfaces result from sanding (loss of surface grains), contour scaling (detachment

of surface plaques along contour lines), flaking and exfoliation. The stone can also split along sedimentation layers. Chipping or fragmentation of sculpted stone is also common.

Stone objects included here come under three historical periods: pre-Angkorian (6th–9th century), Angkorian (9th–14th century) and post-Angkorian (14th–16th century). Many stone objects can be firmly assigned to one of these three periods; some, notably architectural elements and statues, can be further assigned a specific style and a more precise date within the given period.

## A. Sculpture

### 1. Architectural Elements

Stone was used for religious architecture in the pre-Angkorian and Angkorian periods. The majority of ancient Khmer temples were built almost entirely in stone. Even for those temples built primarily in brick, numerous decorative elements in stone were also employed. Only small portions of early post-Angkorian edifices were built in stone. The architectural elements that follow are, therefore, characteristic of pre-Angkorian and Angkorian times. The state of the material varies greatly, some objects being well preserved, others severely eroded or fragmented. The sculpture of some pieces remains unfinished.

#### a. Pediments

Pediments are large decorative stone fixtures placed above temple doorways. They are triangular in shape, and are composed of two or more separate blocks, fitted together and sculpted with decorative motifs. The ensemble can range from approximately 1–3 meters in width and 1–3 meters in height. Motifs include floral scrolls, medallions, human figures and animals. A whole scene from a well-known story can also be represented.

#### b. Lintels

Lintels are rectangular monoliths placed directly above temple entrance gates or doorways, below the pediments described above. They are decorated with motifs similar to those of pediments. They can reach up to nearly one meter in height and one and a half meters in width.

#### c. False Doors

Three of the four doorways of a temple sanctuary are frequently “false doors”; that is, though they are sculpted to look like doors, they do not open. They bear graphic and floral motifs, sometimes integrating human and animal figures. These doors can reach up to more than two meters in height and more than one meter in width. They can be monolithic, or composed of separate blocks fitted together.

#### d. Columnettes

Columnettes are decorative columns placed on either side of a temple door entrance. They can be sculpted in deep relief out of a temple doorway and, therefore, remain attached to the doorway on their back side.

The earliest columnettes are round, sculpted with bands themselves sculpted with decorative motifs. Later in the Angkorian period, the columnettes are octagonal in shape, and bear more complex and abundant sculpted decor on the concentric bands. This decor includes graphic designs (pearls, diamond shapes, flowers, *etc.*) repeated at regular intervals along the length of the column. The base of the column is square and is also sculpted with diverse motifs and figures. The columnettes can reach around 25 centimeters in diameter and more than two meters in height.

e. Pilasters

Pilasters are decorative rectangular supports projecting partially from the wall on either side of a temple doorway. They are treated architecturally as columns, with base, shaft and capital. Motifs include floral scrolls and graphic designs of pearls, diamond shapes, *etc.*, as well as human or animal figures. They range in width from approximately 20–30 centimeters and can reach a height of more than two meters.

f. Antefixes

Antefixes are decorative elements placed around the exterior of each level of a temple tower. They are small free-standing sculptures and can take multiple forms, including but not limited to graphic designs, animal figures, human figures in niches and miniature models of temples.

g. Balustrade Finials

Long balustrades in the form of mythical serpents are found in many Angkorian temples. Often, these line either side of the entrance causeways to temples. The ends of the balustrade take the form of the serpent's multiple cobra-like heads.

h. Wall Reliefs

Much of the surface area of most temples is sculpted with decorative reliefs. This decor includes graphic designs and floral motifs as well as human or animal figures. The figures can range in size from just a few centimeters to more than one meter in height. They can be integrated into the decor or set off in niches. Narrative scenes can also be represented.

i. Other Decorative Items

Other decorative items include wall spikes, roof tile finials, sculpted steps, and other architectural decorations.

2. Free-standing Sculpture

The pre-Angkorian and Angkorian periods are characterized by extensive production of statuary in stone. Some stone statuary was also produced during the post-Angkorian period. This statuary is relatively diverse, including human figures ranging from less than a half meter to nearly three meters in height, as well as animal figures. Some figures, representations of Indian gods, have multiple arms and heads. Figures can be represented alone, or in groups of two or three. When male and

female figures are presented together as an ensemble, the female figures are disproportionately smaller than their male counterparts. Some are part-human, part-animal. Figures can be standing or sitting, or riding animal mounts. Many figures are represented wearing crowns or special headdresses, and holding attributes such as a baton or a conch shell. Clothing and sometimes jewelry are sculpted onto the body. Though statues are generally monolithic, later post-Angkorian statues of the Buddha can have separate arms, sculpted in wood and attached to the stone body. Many statues were once lacquered in black or dark brown, red or gold colors, and retain lacquer traces. Some yellow lacquer is also found.

a. Human and Hybrid (part-human, part-animal) Figures

Examples include a statue of the eight-armed god, four-armed god, representations of Buddha in various attitudes or stances, and female and male figures or deities, including parts (heads, hands, crowns or decorative elements) of statuary, and groups of figures.

b. Animal Figures

Examples include bulls, elephants, lions, and small mammals such as squirrels.

c. Votive Objects

A number of more abstract sculptures were also the object of religious representation from pre-Angkorian to post-Angkorian times. Examples include ritual phallic symbols and sculpted footprints of Buddha.

d. Pedestals

Pedestals for statues can be square, rectangular or round. They vary greatly in size, and can be decorated with graphic and floral decor, as well as animal or human figures. They are usually made of numerous components fitted together, including a base and a top section into which the statue is set.

e. Foundation Deposit Stones

Sacred deposits were placed under statues, as well as under temple foundations and in temple roof vaults, from pre-Angkorian to post-Angkorian times. Marks on these stones indicate sacred configurations, which could contain deposits such as gold or precious stones.

3. Stela

a. Sculpted Stela

Free standing stela sculpted with shallow or deep reliefs served as objects of worship and sometimes as boundary stones from pre-Angkorian to post-Angkorian times. Examples include stela with relief images of gods and goddesses, Buddhas, figures in niches, and other symbols.

b. Inscriptions

Texts recording temple foundations or other information were inscribed on stone stela from pre-Angkorian to post-Angkorian times.

Such texts can also be found on temple doorjambs, pillars and walls. The stela are found in a number of different shapes and sizes, and can also bear decorative reliefs, for example a bull seated on a lotus flower.

#### REGULATORY AMENDMENT

This document amends § 12.104g(b), Customs Regulations (19 CFR 12.104g(b)) to incorporate by reference the above list of archaeological material from Cambodia for which emergency import restrictions are imposed.

#### INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATE

This amendment is being made without notice or public procedure, pursuant to 5 U.S.C. 553(b)(B), because the action being taken is of an emergency nature and such notice or public procedure would be impracticable and contrary to the public interest. For the same reasons, pursuant to 5 U.S.C. 553(d)(3), a delayed effective date is not required.

#### REGULATORY FLEXIBILITY ACT

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

#### EXECUTIVE ORDER 12866

This amendment does not meet the criteria of a "significant regulatory action" as described in E.O. 12866.

#### DRAFTING INFORMATION

The principal author of this document was Keith B. Rudich, Esq., Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

#### LIST OF SUBJECTS IN 19 CFR PART 12

Customs duties and inspections, Imports, Cultural property.

#### AMENDMENT TO THE REGULATIONS

Accordingly, Part 12 of the Customs Regulations (19 CFR Part 12) is amended as set forth below:

#### PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority and specific authority citation for Part 12, in part, continue to read as follows:

**Authority:** 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1624;

\* \* \* \* \*

Sections 12.104 through 12.104i also issued under 19 U.S.C. 2612;

\* \* \* \* \*

2. In § 12.104g(b) the list of emergency actions imposing import restrictions on described articles of cultural property of State Parties is

amended by adding Cambodia in appropriate alphabetical order as follows:

**§ 12.104g Specific items or categories designated by agreements or emergency actions.**

* * * *						
(b) * * *						
State Party	Cultural Property					T.D. No.
Cambodia .....	Khmer stone archaeological material from Cambodia					T.D. 99-88

RAYMOND W. KELLY,  
*Commissioner of Customs.*

Approved: November 9, 1999.

JOHN P. SIMPSON,

*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, December 2, 1999 (64 FR 67479)]

(T.D. 99-89)

**FOREIGN CURRENCIES**

**DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR NOVEMBER 1999**

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign currencies shown below. The rates of exchange, based on these buying rates, are published for the information and use of Customs officers and others concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CFR 159, Subpart C).

Holiday(s): November 11, 1999 and November 25, 1999.

**Austria schilling:**

November 1, 1999 .....	\$0.076263
November 2, 1999 .....	.076350
November 3, 1999 .....	.076197
November 4, 1999 .....	.075870
November 5, 1999 .....	.075580
November 6, 1999 .....	.075580
November 7, 1999 .....	.075580
November 8, 1999 .....	.075311
November 9, 1999 .....	.075587
November 10, 1999 .....	.075841

## FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List for November 1999 (continued):

## Austria schilling (continued):

November 11, 1999	\$.075841
November 12, 1999	.074962
November 13, 1999	.074962
November 14, 1999	.074962
November 15, 1999	.074962
November 16, 1999	.074940
November 17, 1999	.075602
November 18, 1999	.074831
November 19, 1999	.074947
November 20, 1999	.074947
November 21, 1999	.074947
November 22, 1999	.075049
November 23, 1999	.074570
November 24, 1999	.073952
November 25, 1999	.073952
November 26, 1999	.073668
November 27, 1999	.073668
November 28, 1999	.073668
November 29, 1999	.073400
November 30, 1999	.073232

## Belgium franc:

November 1, 1999	\$.026014
November 2, 1999	.026044
November 3, 1999	.025992
November 4, 1999	.025880
November 5, 1999	.025781
November 6, 1999	.025781
November 7, 1999	.025781
November 8, 1999	.025689
November 9, 1999	.025783
November 10, 1999	.025870
November 11, 1999	.025870
November 12, 1999	.025570
November 13, 1999	.025570
November 14, 1999	.025570
November 15, 1999	.025570
November 16, 1999	.025563
November 17, 1999	.025788
November 18, 1999	.025526
November 19, 1999	.025565
November 20, 1999	.025565
November 21, 1999	.025565
November 22, 1999	.025600
November 23, 1999	.025436
November 24, 1999	.025226
November 25, 1999	.025226
November 26, 1999	.025129
November 27, 1999	.025129
November 28, 1999	.025129
November 29, 1999	.025037
November 30, 1999	.024980



FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

## Finland markka:

November 1, 1999	\$0.176496
November 2, 1999	.176698
November 3, 1999	.176345
November 4, 1999	.175588
November 5, 1999	.174915
November 6, 1999	.174915
November 7, 1999	.174915
November 8, 1999	.174293
November 9, 1999	.174932
November 10, 1999	.175521
November 11, 1999	.175521
November 12, 1999	.173486
November 13, 1999	.173486
November 14, 1999	.173486
November 15, 1999	.173486
November 16, 1999	.173435
November 17, 1999	.174966
November 18, 1999	.173183
November 19, 1999	.173452
November 20, 1999	.173452
November 21, 1999	.173452
November 22, 1999	.173688
November 23, 1999	.172578
November 24, 1999	.171148
November 25, 1999	.171148
November 26, 1999	.170492
November 27, 1999	.170492
November 28, 1999	.170492
November 29, 1999	.169870
November 30, 1999	.169483

## France franc:

November 1, 1999	\$0.159980
November 2, 1999	.160163
November 3, 1999	.159843
November 4, 1999	.159157
November 5, 1999	.158547
November 6, 1999	.158547
November 7, 1999	.158547
November 8, 1999	.157983
November 9, 1999	.158562
November 10, 1999	.159096
November 11, 1999	.159096
November 12, 1999	.157251
November 13, 1999	.157251
November 14, 1999	.157251
November 15, 1999	.157251
November 16, 1999	.157205
November 17, 1999	.158593
November 18, 1999	.156977
November 19, 1999	.157221
November 20, 1999	.157221
November 21, 1999	.157221
November 22, 1999	.157434
November 23, 1999	.156428
November 24, 1999	.155132

FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

## France franc (continued):

November 25, 1999	\$0.155132
November 26, 1999	.154538
November 27, 1999	.154538
November 28, 1999	.154538
November 29, 1999	.153974
November 30, 1999	.153623

## Germany deutsche mark:

November 1, 1999	\$0.536550
November 2, 1999	.537163
November 3, 1999	.536090
November 4, 1999	.533789
November 5, 1999	.531744
November 6, 1999	.531744
November 7, 1999	.531744
November 8, 1999	.529852
November 9, 1999	.531795
November 10, 1999	.533584
November 11, 1999	.533584
November 12, 1999	.527398
November 13, 1999	.527398
November 14, 1999	.527398
November 15, 1999	.527398
November 16, 1999	.527244
November 17, 1999	.531897
November 18, 1999	.526477
November 19, 1999	.527295
November 20, 1999	.527295
November 21, 1999	.527295
November 22, 1999	.528011
November 23, 1999	.524637
November 24, 1999	.520291
November 25, 1999	.520291
November 26, 1999	.518297
November 27, 1999	.518297
November 28, 1999	.518297
November 29, 1999	.516405
November 30, 1999	.515229

## Greece drachma:

November 1, 1999	\$0.003192
November 2, 1999	.003193
November 3, 1999	.003191
November 4, 1999	.003180
November 5, 1999	.003176
November 6, 1999	.003176
November 7, 1999	.003176
November 8, 1999	.003156
November 9, 1999	.003162
November 10, 1999	.003180
November 11, 1999	.003180
November 12, 1999	.003143
November 13, 1999	.003143
November 14, 1999	.003143
November 15, 1999	.003140
November 16, 1999	.003138

FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

Greece drachma (continued):

November 17, 1999	\$0.003163
November 18, 1999	.003129
November 19, 1999	.003131
November 20, 1999	.003131
November 21, 1999	.003131
November 22, 1999	.003140
November 23, 1999	.003122
November 24, 1999	.003099
November 25, 1999	.003099
November 26, 1999	.003084
November 27, 1999	.003084
November 28, 1999	.003084
November 29, 1999	.003074
November 30, 1999	.003065

Ireland pound:

November 1, 1999	\$1.332463
November 2, 1999	1.333987
November 3, 1999	1.331320
November 4, 1999	1.325607
November 5, 1999	1.320528
November 6, 1999	1.320528
November 7, 1999	1.320528
November 8, 1999	1.315830
November 9, 1999	1.320655
November 10, 1999	1.325099
November 11, 1999	1.325099
November 12, 1999	1.309735
November 13, 1999	1.309735
November 14, 1999	1.309735
November 15, 1999	1.309735
November 16, 1999	1.309354
November 17, 1999	1.320909
November 18, 1999	1.307449
November 19, 1999	1.309481
November 20, 1999	1.309481
November 21, 1999	1.309481
November 22, 1999	1.311259
November 23, 1999	1.302878
November 24, 1999	1.292085
November 25, 1999	1.292085
November 26, 1999	1.287133
November 27, 1999	1.287133
November 28, 1999	1.287133
November 29, 1999	1.282435
November 30, 1999	1.279515

Italy lira:

November 1, 1999	\$0.000542
November 2, 1999	.000543
November 3, 1999	.000542
November 4, 1999	.000539
November 5, 1999	.000537
November 6, 1999	.000537
November 7, 1999	.000537
November 8, 1999	.000535

FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

## Italy lira (continued):

November 9, 1999	\$0.000537
November 10, 1999	.000539
November 11, 1999	.000539
November 12, 1999	.000533
November 13, 1999	.000533
November 14, 1999	.000533
November 15, 1999	.000533
November 16, 1999	.000533
November 17, 1999	.000537
November 18, 1999	.000532
November 19, 1999	.000533
November 20, 1999	.000533
November 21, 1999	.000533
November 22, 1999	.000533
November 23, 1999	.000530
November 24, 1999	.000526
November 25, 1999	.000526
November 26, 1999	.000524
November 27, 1999	.000524
November 28, 1999	.000524
November 29, 1999	.000522
November 30, 1999	.000520

## Luxembourg franc:

November 1, 1999	\$0.026014
November 2, 1999	.026044
November 3, 1999	.025992
November 4, 1999	.025880
November 5, 1999	.025781
November 6, 1999	.025781
November 7, 1999	.025781
November 8, 1999	.025689
November 9, 1999	.025783
November 10, 1999	.025870
November 11, 1999	.025870
November 12, 1999	.025570
November 13, 1999	.025570
November 14, 1999	.025570
November 15, 1999	.025570
November 16, 1999	.025563
November 17, 1999	.025788
November 18, 1999	.025526
November 19, 1999	.025565
November 20, 1999	.025565
November 21, 1999	.025565
November 22, 1999	.025600
November 23, 1999	.025436
November 24, 1999	.025226
November 25, 1999	.025226
November 26, 1999	.025129
November 27, 1999	.025129
November 28, 1999	.025129
November 29, 1999	.025037
November 30, 1999	.024980

FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

## Netherlands guilder:

November 1, 1999	\$0.476197
November 2, 1999	.476741
November 3, 1999	.475789
November 4, 1999	.473747
November 5, 1999	.471931
November 6, 1999	.471931
November 7, 1999	.471931
November 8, 1999	.470252
November 9, 1999	.471977
November 10, 1999	.473565
November 11, 1999	.473565
November 12, 1999	.468074
November 13, 1999	.468074
November 14, 1999	.468074
November 15, 1999	.468074
November 16, 1999	.467938
November 17, 1999	.472068
November 18, 1999	.467257
November 19, 1999	.467984
November 20, 1999	.467984
November 21, 1999	.467984
November 22, 1999	.468619
November 23, 1999	.465624
November 24, 1999	.461767
November 25, 1999	.461767
November 26, 1999	.459997
November 27, 1999	.459997
November 28, 1999	.459997
November 29, 1999	.458318
November 30, 1999	.457274

## Portugal escudo:

November 1, 1999	\$0.005234
November 2, 1999	.005240
November 3, 1999	.005230
November 4, 1999	.005207
November 5, 1999	.005187
November 6, 1999	.005187
November 7, 1999	.005187
November 8, 1999	.005169
November 9, 1999	.005188
November 10, 1999	.005205
November 11, 1999	.005205
November 12, 1999	.005145
November 13, 1999	.005145
November 14, 1999	.005145
November 15, 1999	.005145
November 16, 1999	.005144
November 17, 1999	.005189
November 18, 1999	.005136
November 19, 1999	.005144
November 20, 1999	.005144
November 21, 1999	.005144
November 22, 1999	.005151
November 23, 1999	.005118
November 24, 1999	.005076

FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

## Portugal escudo (continued):

November 25, 1999	\$0.005076
November 26, 1999	.005056
November 27, 1999	.005056
November 28, 1999	.005056
November 29, 1999	.005038
November 30, 1999	.005026

## South Korea won:

November 1, 1999	\$0.000836
November 2, 1999	.000838
November 3, 1999	.000840
November 4, 1999	.000844
November 5, 1999	.000842
November 6, 1999	.000842
November 7, 1999	.000842
November 8, 1999	.000845
November 9, 1999	.000844
November 10, 1999	.000847
November 11, 1999	.000847
November 12, 1999	.000855
November 13, 1999	.000855
November 14, 1999	.000855
November 15, 1999	.000846
November 16, 1999	.000849
November 17, 1999	.000850
November 18, 1999	.000852
November 19, 1999	.000852
November 20, 1999	.000852
November 21, 1999	.000852
November 22, 1999	.000852
November 23, 1999	.000855
November 24, 1999	.000861
November 25, 1999	.000861
November 26, 1999	.000863
November 27, 1999	.000863
November 28, 1999	.000863
November 29, 1999	.000862
November 30, 1999	.000862

## Spain peseta:

November 1, 1999	\$0.006307
November 2, 1999	.006314
November 3, 1999	.006302
November 4, 1999	.006275
November 5, 1999	.006251
November 6, 1999	.006251
November 7, 1999	.006251
November 8, 1999	.006228
November 9, 1999	.006251
November 10, 1999	.006272
November 11, 1999	.006272
November 12, 1999	.006199
November 13, 1999	.006199
November 14, 1999	.006199
November 15, 1999	.006199
November 16, 1999	.006198

FOREIGN CURRENCIES—Daily Rates for Countries Not on Quarterly List  
for November 1999 (continued):

Spain peseta (continued):

November 17, 1999	\$0.006252
November 18, 1999	.006189
November 19, 1999	.006198
November 20, 1999	.006198
November 21, 1999	.006198
November 22, 1999	.006207
November 23, 1999	.006167
November 24, 1999	.006116
November 25, 1999	.006116
November 26, 1999	.006092
November 27, 1999	.006092
November 28, 1999	.006092
November 29, 1999	.006070
November 30, 1999	.006056

Taiwan N.T. dollar:

November 1, 1999	\$0.031447
November 2, 1999	.031437
November 3, 1999	.031447
November 4, 1999	.031447
November 5, 1999	.031437
November 6, 1999	.031437
November 7, 1999	.031437
November 8, 1999	.031417
November 9, 1999	.031427
November 10, 1999	.031417
November 11, 1999	.031417
November 12, 1999	.031437
November 13, 1999	.031437
November 14, 1999	.031437
November 15, 1999	.031447
November 16, 1999	.031427
November 17, 1999	.031417
November 18, 1999	.031447
November 19, 1999	.031437
November 20, 1999	.031437
November 21, 1999	.031437
November 22, 1999	.031447
November 23, 1999	.031466
November 24, 1999	.031466
November 25, 1999	.031466
November 26, 1999	.031501
November 27, 1999	.031501
November 28, 1999	.031501
November 29, 1999	.031506
November 30, 1999	.031576

Dated: December 1, 1999.

RICHARD B. LAMAN,  
Chief,  
Customs Information Exchange.

(T.D. 99-90)

## FOREIGN CURRENCIES

## VARIANCES FROM QUARTERLY RATES FOR NOVEMBER 1999

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rates published in Treasury Decision 99-74 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates.

Holiday(s): November 11, 1999 and November 25, 1999.

## Denmark krone:

November 24, 1999 .....	\$0.136864
November 25, 1999 .....	.136864
November 26, 1999 .....	.136231
November 27, 1999 .....	.136231
November 28, 1999 .....	.136231
November 29, 1999 .....	.135759
November 30, 1999 .....	.135391

## Switzerland franc:

November 24, 1999 .....	\$0.636092
November 25, 1999 .....	.636092
November 26, 1999 .....	.633112
November 27, 1999 .....	.633112
November 28, 1999 .....	.633112
November 29, 1999 .....	.629802
November 30, 1999 .....	.629208

## Thailand baht (tical):

November 1, 1999 .....	\$0.025967
November 2, 1999 .....	.025907
November 4, 1999 .....	.026008
November 5, 1999 .....	.025940
November 6, 1999 .....	.025940
November 7, 1999 .....	.025940
November 15, 1999 .....	.025961

Dated: December 1, 1999.

RICHARD B. LAMAN,  
*Chief,*  
*Customs Information Exchange.*



# U.S. Customs Service

## *General Notices*

DEPARTMENT OF THE TREASURY,  
OFFICE OF THE COMMISSIONER OF CUSTOMS,  
*Washington, DC, December 1, 1999.*

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,  
*Assistant Commissioner,  
Office of Regulations and Rulings.*

---

### WITHDRAWAL OF PROPOSED MODIFICATION AND REVOCATION OF CUSTOMS RULING LETTERS AND PRIOR CUSTOMS TREATMENT PERTAINING TO THE DUTIABILITY OF SPARE PARTS UNDER THE VESSEL REPAIR STATUTE

**ACTION:** Notice of withdrawal of proposed modification and revocation of ruling letters and and prior Customs treatment.

**SUMMARY:** This notice advises interested parties that Customs is withdrawing its proposal to modify or revoke ruling letters and prior Customs treatment pertaining to the dutiability of "spare parts" as that term is used in 19 U.S.C. 1466(h)(2) and (3). Notice of the proposed modification or revocation was published on April 14, 1999, in the CUSTOMS BULLETIN, pursuant to section 625(c)(1) and (2), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)(2)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub.L. 103-182, 107 Stat. 2057)

**EFFECTIVE DATE:** December 15, 1999.

**FOR FURTHER INFORMATION CONTACT:** Glen E. Vereb, Entry Procedures and Carriers Branch, Office of Regulations and Rulings, 202-927-2320.

#### SUPPLEMENTAL INFORMATION:

##### BACKGROUND

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Moderniza-

tion) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), on April 14, 1999, Customs published a notice in the CUSTOMS BULLETIN, Volume 33, Number 15, proposing to modify or revoke ruling letters pertaining to the dutiability of "spare parts" as that term is used in 19 U.S.C. 1466(h)(2) and (3). Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, the aforementioned notice proposed to revoke any treatment previously accorded by the Customs Service to substantially identical transactions.

Six comments were received in response to the notice. At this time, we have determined that Customs should continue its current interpretation of 19 U.S.C. 1466(h)(2) and (3). Therefore, this notice advises interested parties that Customs is withdrawing its proposal to reinterpret these statutory provisions.

Dated: December 1, 1999.

STUART P. SEIDEL,  
Assistant Commissioner,  
*Office of Regulations and Rulings.*

---

#### PROPOSED REVOCATION OF RULING LETTERS AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF SIGNAL GENERATORS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of two ruling letters and treatment relating to the classification of signal generators.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 [19 U.S.C. 1625(c)], as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke two (2) rulings pertaining to the tariff classification of signal generators and any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed rulings.

DATE: Comments must be received on or before January 14, 2000.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229. Comments submitted may be inspected at the above address.

FOR FURTHER INFORMATION CONTACT: Herminio M. Castro, General Classification Branch (202) 927-2244.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057)(hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 [19 U.S.C. 1625(c)(1)], as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke two rulings pertaining to the tariff classification of signal generators. Although in this notice Customs is specifically referring to two rulings, Headquarters Ruling Letters (HQ) 961882 and 961888, both issued on August 3, 1998, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part

of the importer or their agents for importations of merchandise subsequent to this notice.

In HQ 961882 and 961888, Customs ruled that signal generators were classifiable as “\* \* \* other instruments and apparatus for measuring or checking electrical quantities \* \* \*: [o]ther instruments and apparatus: [o]ther” under subheading 9030.89.00, Harmonized Tariff Schedule of the United States (HTSUS), a “basket” provision. HQ 961882 and HQ 961888 are set forth as “Attachment A” and “Attachment B” to this document. Since the issuance of those rulings, Customs has had a chance to review new evidence and has determined that the classification of the merchandise is in error.

It is now Customs view that signal generators are properly classifiable under subheading 9030.40.00, HTSUS, as “[o]ther instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers.” Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke HQ 961882 and HQ 961888 to reflect the proper classification of signal generators. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Customs invites comments on the correctness of the proposed revocation. Before taking this action, we will give consideration to any written comments timely received. Proposed Headquarters Ruling HQ 963266, revoking HQ 961882, is set forth as “Attachment C” to this document. Proposed Headquarters Ruling HQ 963267, revoking HQ 961888, is set forth as “Attachment D” to this document.

Dated: November 24, 1999.

MARVIN AMERNICK,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachments]

## [ATTACHMENT A]

DEPARTMENT OF THE TREASURY,

U.S. CUSTOMS SERVICE,

Washington, DC, August 3, 1998.

CLA-2 RR:CR:GC 961882 JAS

Category: Classification

Tariff No. 9030.89.00

Mr. ED OHLMANN

TEKTRONIX, INC.

P.O. Box 500

Beaverton, OR 97077-0001

Re: NY C86285 Revoked; Signal Generator, Signal-Producing Device for Testing the Accuracy of Receiver Devices; Measuring or Checking Instrument; Instrument That Carries Out Steps in a Process for Inspecting Goods, Checking, *United States v. Corning Glass Works*; Section XVI, Note 1(m); HQ 954856.

DEAR MR. OHLMANN:

In NY C86285, which the Director, National Commodity Specialist Division, New York, issued to you on April 30, 1998, signal generator models SME03, SMIQ02, SMIQ03, and R3561L, were held to be classifiable in subheading 8543.20.00, Harmonized Tariff Schedule of the United States (HTSUS), as other electrical machines and apparatus, not specified or included elsewhere in Chapter 85.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of NY C86285 was published on July 1, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 26. No comments were received in response to that notice.

**Facts:**

The merchandise in issue, signal generators or function generators, are electronic instruments that produce periodic voltage or current waveforms, signals or pulses, that are used in testing and calibration applications for a variety of electronic equipment. These signal generators perform no independent measuring or checking function; rather, other instruments utilize the signals they produce to measure or check the performance of various electronic systems.

**Issue:**

Whether the signal generators in issue are checking instruments of heading 9030.

**Law and Analysis:**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

**The Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant heading 85.43 ENs, at p. 1518 and 1519, state the heading covers all electrical appliances and apparatus not falling in any other heading of Chapter 85, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by an applicable Section XVI legal note.

Section XVI, Note 1(m), HTSUS, excludes from that Section goods of Chapter 90. The issue, then, is whether there exists any provision Chapter 90 that describes the signal generators under consideration. In this regard, other ENs, at p. 1652, contain the following statement regarding the scope of heading 90.30 "Apart from the above-mentioned types of instruments or apparatus which generally *effect* direct measurements, the heading also includes those which supply the operator with certain data *from which* the quantity to be

measured can be calculated (comparative method)." (Emphasis added.) While not necessarily conclusive, these ENs suggest that heading 9030 encompasses not only instruments and apparatus which directly perform a measuring or checking function, but also those which generate electrical signals utilized by other instruments and apparatus that do perform such measuring or checking functions.

On a case-by-case basis, prior administrative and judicial decisions should be considered instructive in interpreting provisions of the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. In this respect, the Court of Customs and Patent Appeals (now the Court of Appeals for the Federal Circuit) in *United States v. Corning Glass Works*, C.D. 4716, *rev'd.*, C.A.D. 1216 (1978), considered whether ampul inspection machines were measuring or checking instruments under a nearly identical provision of the Tariff Schedules of the United States (TSUS), the HTSUS predecessor tariff code. The Court recited its understanding of the common meaning of the term "checking" and concluded it encompasses machines that carry out steps in a process for inspecting ampuls to determine whether they conform to an imperfection-free standard. Limiting the provision to devices that (actually) measure or verify the accuracy of a measurement, the Court concluded, improperly renders "checking" superfluous. We find this decision instructive in determining the scope of heading 9030, particularly when read in conjunction with the referenced 90.30 ENs. See also *HQ 954856*, dated September 10, 1993, and cases cited. For these reasons, the signal generators in issue are provided for in heading 9030. Section XVI, Note 1(m) thus eliminates heading 8543 from consideration.

*Holding:*

Under the authority of GRI 1, signal generator models SME03, SMIQ02, SMIQ03, and R3561L, are provided for in heading 9030. They are classifiable in subheading 9030.89.00, HTSUS, as other instruments and apparatus. The rate of duty is 2.3 percent ad valorem.

NY C86285, dated April 30, 1998, is revoked. In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. §1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 C.F.R. §177.10(c)(1)).

MARVIN AMERNICK,  
(for John Durant, Director,  
Commercial Rulings Division.)

---

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC, August 3, 1998.  
CLA-2 RR:CR:GC 961888 JAS  
Category: Classification  
Tariff No. 9030.89.00

MR. NATHAN LAMPERT  
TECHCOMP INTERNATIONAL, LTD.  
5007 Concord Avenue  
Great Neck, NY 11020

Re: PD B88154 Modified; Bit Pattern Generator, Signal-Producing Device Used in Testing Communications Equipment; Measuring or Checking Instrument; Instrument That Carries Out Steps in a Process of Inspecting Goods, Checking, *United States v. Corning Glass Works*; Section XVI, Note 1(m); *HQ 954856*.

DEAR MR. LAMPERT:

In PD B88154, which the Area Port Director of Customs, Washington, D.C., issued to you on August 12, 1997, the model SHF BPG20GIG bit pattern generator was held to be classifiable in subheading 8543.20.00, Harmonized Tariff Schedule of the United States

(HTSUS), as other electrical machines and apparatus, not specified or included elsewhere in Chapter 85. The classification expressed in PD B88154 with respect to the model SHF EA20GIG error analyzer (EA) remains unaffected and is not in issue here.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. §1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act, Pub. L. 103-182, 107 Stat. 2057, 2186 (1993), notice of the proposed modification of PD B88154 was published on July 1, 1998, in the CUSTOMS BULLETIN, Volume 32, Number 26. No comments were received in response to that notice.

**Facts:**

The model SHF BPG20GIG bit pattern generator (BPG), is described as being used in testing communications equipment. The device sends either an electrical or optical signal to the device being tested and also to the EA which compares the signals. PD B88154 contained no further description of the BPG. However, available information suggests the BPG is a type of signal generator which performs no independent measuring or checking function; rather, other instruments like the EA utilize the signals it produces to measure or check the performance of various electronic systems.

**Issue:**

Whether the BPG in issue is a checking instrument of heading 9030.

**Law and Analysis:**

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6.

The **Harmonized Commodity Description and Coding System Explanatory Notes (ENs)** constitute the official interpretation of the Harmonized System. While not legally binding on the contracting parties, and therefore not dispositive, the ENs provide a commentary on the scope of each heading of the Harmonized System and are thus useful in ascertaining the classification of merchandise under the System. Customs believes the ENs should always be consulted. See T.D. 89-80, 54 Fed. Reg. 35127, 35128 (Aug. 23, 1989).

Relevant heading 85.43 ENs, at p. 1518 and 1519, state the heading covers all electrical appliances and apparatus not falling in any other heading of Chapter 85, nor covered more specifically by a heading of any other Chapter of the Nomenclature, nor excluded by an applicable Section XVI legal note.

Section XVI, Note 1(m), HTSUS, excludes from that Section goods of Chapter 90. The issue, then, is whether there exists any provision in Chapter 90 that describes the BPG under consideration. In this regard, other ENs, at p. 1652, contain the following statement regarding the scope of heading 90.30 "Apart from the above-mentioned types of instruments or apparatus which generally *effect* direct measurements, the heading also includes those which supply the operator with certain data *from which* the quantity to be measured can be calculated (comparative method)." (Emphasis added). While not necessarily conclusive, these ENs suggest that heading 9030 encompasses not only instruments and apparatus which directly perform a measuring or checking function, but also those which generate electrical signals utilized by other instruments and apparatus that do perform such measuring or checking functions.

On a case-by-case basis, prior administrative and judicial decisions should be considered instructive in interpreting provisions of the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. In this respect, the Court of Customs and Patent Appeals (now the Court of Appeals for the Federal Circuit) in *United States v. Corning Glass Works*, C.D. 4716, *rev'd.*, C.A.D. 1216 (1978), considered whether ampul inspection machines were measuring or checking instruments under a nearly identical provision of the Tariff Schedules of the United States (TSUS), the HTSUS predecessor tariff code. The Court recited its understanding of the common meaning of the term "checking" and concluded it encompasses machines that carry out steps in a process for inspecting ampuls to determine whether they conform to an imperfection-free standard. Limiting the provision to devices that (actually) measure or verify the accuracy of a measurement, the Court concluded, improperly renders "checking" superfluous. We find this decision instructive in determining the scope of heading 9030, particularly when read in conjunction with the

referenced 90.30 ENs. See also HQ 954856, dated September 10, 1993, and cases cited. For these reasons, we conclude that the BPG in issue here is provided for in heading 9030. Section XVI, Note 1(m) thus eliminates heading 8543 from consideration.

*Holding:*

Under the authority of GRI 1, the model SHF BPG20GIG bit pattern generator is provided for in heading 9030. It is classifiable in subheading 9030.89.00, HTSUS, as other instruments and apparatus. The rate of duty is 2.3 percent ad valorem.

PD B88154, dated August 12, 1997, is modified accordingly. In accordance with 19 U.S.C. §1625(c)(1), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN. Publication of rulings or decisions pursuant to 19 U.S.C. §1625(c)(1) does not constitute a change of practice or position in accordance with section 177.10(c)(1), Customs Regulations (19 C.F.R. §177.10(c)(1)).

MARVIN AMERNICK,  
(for John Durant, Director,  
Commercial Rulings Division.)

---

[ATTACHMENT C]

DEPARTMENT OF THE TREASURY,  
U.S. CUSTOMS SERVICE,  
Washington, DC.

CLA-2 RR:CR-GC 963266 HMC  
Category: Classification  
Tariff No. 9030.40.00

MR. TED HENDERSON  
TEKTRONIX, INC.  
P.O. Box 500, M/S 78-ELA  
Beaverton, OR 97077

Re: Signal Generators; Other Instruments and Apparatus, Specially Designed for Telecommunications; HQ 961882 and HQ 961888, Revoked.

DEAR MR. HENDERSON:

In Headquarters Ruling Letter (HQ) 961882, issued to you on August 3, 1998, Customs classified various signal generators under subheading 9030.89.00 of the Harmonized Tariff Schedule of the United States (HTSUS), as other instruments and apparatus for measuring or checking electrical quantities. We have reviewed this ruling and determined that the classification set forth is in error. See also HQ 963267, issued on this date, revoking HQ 961888, dated August 3, 1998.

*Facts:*

The merchandise consists of signal generators, which have been the subject of New York (NY) and Headquarters (HQ) ruling letters. In NY C86285, dated April 30, 1998, the merchandise was held to be classifiable under subheading 8543.20.00, Harmonized Tariff Schedule of the United States (HTSUS), as other electrical machines and apparatus, not specified or included elsewhere in Chapter 85. On August 3, 1998, Customs issued HQ 961882, reclassifying the signal generators under subheading 9030.89.00, HTSUS, and revoking NY C86285 (HQ 961888 also reclassified similar generators under subheading 9030.89.00, revoking PD B88154, dated August 12, 1997). The facts provided in HQ 961882 are as follows:

The merchandise in issue, signal generators or function generators (models SME03, SMIQ02, SMIQ03, R3561L), are electronic instruments that produce periodic voltage or current waveforms, signals or pulses, that are used in testing and calibration applications for a variety of electronic equipment. These signal generators perform no independent measuring or checking function; rather, other instruments utilize the signals they produce to measure or check the performance of various electronic systems.



In a letter dated January 19, 1999, you provided new information which states that the signal generators are designed for testing telecommunication products, such as radios, mobile and cellular telephones and cellular telephone base stations, by producing a variety of analog and/or digital signals conforming to telecommunications standards. You explain that the signal generators create a test signal based on a specific telecommunication standard that acts as a stimulus, transmitted via metallic cable. The telecommunication products connect to a designated signal generator and to a measuring or checking device that verifies the operation and accuracy of the product. Without the designed and calibrated signal generators, this testing cannot be carried out.

The HTSUS provisions under consideration are as follows:

9030 Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof:

9030.40.00 Other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)

\* \* \* \* \*

**Other instruments and apparatus:**

9030.89.00	Other
------------	-------

*Issue:*

Whether the signal generators are classifiable as other instruments and apparatus, specially designed for telecommunications under subheading 9030.40.00, HTSUS.

**Law and Analysis:**

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

In HQ 961882, Customs found that the merchandise was described by heading 9030, HTSUS. Citing *United States v. Corning Glass Works*, 66 C.C.P.A. 25, 586 F.2d 822 (1978), Customs determined that heading 9030, HTSUS, encompasses not only instruments and apparatus which directly performed a measuring or checking function, but also those which generate electrical signals utilized by other instruments and apparatus that do perform such measuring or checking functions. It found that the signal generators were not classifiable under subheading 8543.20.00, HTSUS, reasoning that they were excluded from classification in Chapter 85 by Note 1(m) to Section XVI, HTSUS. The merchandise was classified under subheading 9030.89.00, HTSUS. (See also HQ 961888, dated August 3, 1998, for a similar finding.) Protestant claims that the signal generators should have been classified under subheading 9030.40.00, HTSUS, because they are used exclusively for testing wireless telecommunication products.

GRI 3(a), states in part that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more subheadings (through GRI 6), the subheading which provides the most specific description shall be preferred to subheadings providing a more general description. Classification turns on which subheading is more definite or specific. The more specific subheading will prevail over a more general subheading.

Courts have applied the "more difficult to satisfy" test to determine the more specific of competing tariff provisions. The provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty will prevail. See *Mitsui Petrochemicals (America), Ltd. v. U.S.*, Slip Op. 97-108 (CIT 1997), and *Orlando Food Corp. v. U.S.*, 140 F.3d 1437 (Fed. Cir. 1998), citing *United States v. Siemens Am., Inc.*, 68 C.C.F.A. 62, 70, 653 F.2d 471, 477 (1981). The "analysis is also guided by the general rule of customs jurisprudence that, in the absence of legislative intent to the contrary, a product described by both a use provision and an *ex nomine* provision is generally

more specifically provided for under the use provision." *Orlando Food Corp. v. US*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)(quoting, *United States v. Siemens Am., Inc.*, 653 F.2d 471, 478 (CCPA 1981))(internal quotation marks omitted). In addition, insofar as classification in a "basket" provision is concerned, the Courts have stated that "[c]lassification of imported merchandise in a 'basket' provision is appropriate only when there is no tariff category that covers the merchandise more specifically." See *Apex Universal, Inc. v. United States*, CIT Slip Op. 98-69 (1998). These are aids "for resolving issues where the competing provisions are otherwise in balance." *Orlando Food Corp. v. US*, 140 F.3d at 1441 (Fed. Cir. 1998)(quoting, *Siemens Am.*, 653 F.2d at 478 n.6 (CCPA 1981)).

Subheading 9030.89.00, which provides for other instruments and apparatus; other, is a "basket" provision and thus less specific than subheading 9030.40.00, which provides for other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers). Subheading 9030.40.00 describes an identifiable class of instruments and apparatus of heading 9030, HTSUS, whereas subheading 9030.89.00 describes a more general category of instruments and apparatus of heading 9030.

The new evidence shows that the merchandise is specially designed for telecommunications. The signal generators are specifically engineered to generate electronic signals for testing wireless communication devices, based on specific telecommunications standards. The signal generators in conjunction with checking devices allow the tester to verify the operation and accuracy of the cellular telephone, radio or other telecommunications products. Therefore, we find that the signal generators are classifiable under subheading 9030.40.00, HTSUS. Accordingly, HQ 961882 is hereby revoked.

**Holding:**

The signal generators, models SME03, SMIQ02, SMIQ03, R3561L are classifiable under subheading 9030.40.00, HTSUS, as "Other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)."

**Effect on Other Rulings:**

HQ 961882, dated August 3, 1998, is revoked.

JOHN DURANT,  
Director,  
Commercial Rulings Division.

---

[ATTACHMENT D]

DEPARTMENT OF THE TREASURY  
U.S. CUSTOMS SERVICE,  
Washington, DC.  
CLA-2 RR:CR:GC 963267 HMC  
Category: Classification  
Tariff No. 9030.40.00

MR. NATHAN LAMPERT  
TECHCOMP INTERNATIONAL, LTD.  
5007 Concord Avenue  
Great Neck, NY 11020

Re: Signal Generators; Other Instruments and Apparatus, Specially Designed for Telecommunications; HQ 961882 and HQ 961888, Revoked.

DEAR MR. LAMPERT:

In Headquarters Ruling Letter (HQ) 961888, issued to you on August 3, 1998, Customs classified various signal generators under subheading 9030.89.00 of the Harmonized Tariff Schedule of the United States (HTSUS), as other instruments and apparatus for measuring or checking electrical quantities. We have reviewed this ruling and determined that the classification set forth is in error. See also HQ 963266, issued on this date, revoking HQ 961882, dated August 3, 1998.

*Facts:*

The merchandise consists of bit pattern generators, model SHF BPG20GIG, which have been the subject of New York (NY) and Headquarters (HQ) ruling letters. In PD B88154, dated August 12, 1997, the merchandise was held to be classifiable under subheading 8543.20.00, Harmonized Tariff Schedule of the United States (HTSUS), as other electrical machines and apparatus, not specified or included elsewhere in Chapter 85. On August 3, 1998, Customs issued HQ 961888, reclassifying the signal generators under subheading 9030.89.00, HTSUS, and revoking PD B88154 (HQ 961882 also reclassified similar signal generators under subheading 9030.89.00, revoking NY C86285, dated April 30, 1998). The facts provided in HQ 961888 are as follows:

The model SHF BPG20GIG bit pattern generator (BPG), is described as being used in testing communications equipment. The device sends either an electrical or optical signal to the device being tested and also to the EA which compares the signals. PD B88154, contained no further description of the BPG. However, available information suggests the BPG is a type of signal generator which performs no independent measuring or checking function; rather, other instruments like the EA utilize the signals it produces to measure or check the performance of various electronic systems.

New available information suggests that the signal generators are designed for testing telecommunication products, such as radios, mobile and cellular telephones and cellular telephone base stations, by producing a variety of analog and/or digital signals conforming to telecommunications standards. The signal generators create a test signal based on a specific telecommunication standard that acts as a stimulus, transmitted via metallic cable. The telecommunication products connect to a designated signal generator and to a measuring or checking device that verifies the operation and accuracy of the product. Without the designed and calibrated signal generators, this testing cannot be carried out.

The HTSUS provisions under consideration are as follows:

9030	Oscilloscopes, spectrum analyzers and other instruments and apparatus for measuring or checking electrical quantities, excluding meters of heading 9028; instruments and apparatus for measuring or detecting alpha, beta, gamma, X-ray, cosmic or other ionizing radiations; parts and accessories thereof
9030.40.00	Other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)
*	*
	Other instruments and apparatus:
9030.89.00	Other

*Issue:*

Whether the signal generators are classifiable as other instruments and apparatus, specially designed for telecommunications under subheading 9030.40.00, HTSUS.

*Law and Analysis:*

Merchandise is classifiable under the HTSUS in accordance with the General Rules of Interpretation (GRIs). GRI 1 states in part that for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes, and provided the headings or notes do not require otherwise, according to GRIs 2 through 6. GRI 6 states that the classification of goods in the subheadings of a heading shall be determined according to the terms of those subheadings and any related subheading notes and, *mutatis mutandis*, to the above rules, on the understanding that only subheadings at the same level are comparable. For the purposes of this rule, the relative section, chapter and subchapter notes also apply, unless the context otherwise requires.

In HQ 961888, Customs found that the merchandise was described by heading 9030, HTSUS. Citing *United States v. Corning Glass Works*, 66 C.C.P.A. 25, 586 F.2d 822 (1978), Customs determined that heading 9030, HTSUS, encompasses not only instruments and apparatus which directly performed a measuring or checking function, but also those which generate electrical signals utilized by other instruments and apparatus that do perform such measuring or checking functions. It found that the signal generators were not classifiable under subheading 8543.20.00, HTSUS, reasoning that they were excluded from classification in Chapter 85 by Note 1(m) to Section XVI, HTSUS. The merchandise was classified under subheading 9030.89.00, HTSUS. (See also HQ 961882, dated August

3, 1998, for a similar finding.) Protestant claims that the signal generators should have been classified under subheading 9030.40.00, HTSUS, because they are used exclusively for testing wireless telecommunication products.

GRI 3(a), states in part that when, by application of rule 2(b) or for any other reason, goods are, *prima facie*, classifiable under two or more subheadings (through GRI 6), the subheading which provides the most specific description shall be preferred to subheadings providing a more general description. Classification turns on which subheading is more definite or specific. The more specific subheading will prevail over a more general subheading.

Courts have applied the "more difficult to satisfy" test to determine the more specific of competing tariff provisions. The provision with requirements that are more difficult to satisfy and that describe the article with the greatest degree of accuracy and certainty will prevail. See *Mitsui Petrochemicals (America), Ltd. v. U.S.*, Slip Op. 97-108 (CIT 1997), and *Orlando Food Corp. v. US*, 140 F.3d 1437 (Fed. Cir. 1998), citing *United States v. Siemens Am., Inc.*, 68 C.C.P.A. 62, 70, 653 F.2d 471, 477 (1981). The "analysis is also guided by the general rule of customs jurisprudence that, in the absence of legislative intent to the contrary, a product described by both a use provision and an *eo nomine* provision is generally more specifically provided for under the use provision." *Orlando Food Corp. v. US*, 140 F.3d 1437, 1441 (Fed. Cir. 1998)(quoting, *United States v. Siemens Am., Inc.*, 653 F.2d 471, 478 (CCPA 1981))(internal quotation marks omitted). In addition, insofar as classification in a "basket" provision is concerned, the Courts have stated that "[c]lassification of imported merchandise in a 'basket' provision is appropriate only when there is no tariff category that covers the merchandise more specifically." See *Apex Universal, Inc. v. United States*, CIT Slip Op. 98-69 (1998). These are aids "for resolving issues where the competing provisions are otherwise in balance." *Orlando Food Corp. v. US*, 140 F.3d at 1441 (Fed. Cir. 1998)(quoting, *Siemens Am.*, 653 F.2d at 478 n.6 (CCPA 1981)).

Subheading 9030.89.00, which provides for other instruments and apparatus; other, is a "basket" provision and thus less specific than subheading 9030.40.00, which provides for other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers). Subheading 9030.40.00 describes an identifiable class of instruments and apparatus of heading 9030, HTSUS, whereas subheading 9030.89.00 describes a more general category of instruments and apparatus of heading 9030.

The new evidence shows that the merchandise is specially designed for telecommunications. The signal generators are specifically engineered to generate electronic signals for testing wireless communication devices, based on specific telecommunications standards. The signal generators in conjunction with checking devices allow the tester to verify the operation and accuracy of the cellular telephone, radio or other telecommunications products. Therefore, we find that the signal generators are classifiable under subheading 9030.40.00, HTSUS. Accordingly, HQ 961888 is hereby revoked.

#### *Holding:*

The signal generator, model SHF BPG20GIG is classifiable under subheading 9030.40.00, HTSUS, as "Other instruments and apparatus, specially designed for telecommunications (for example, cross-talk meters, gain measuring instruments, distortion factor meters, psophometers)."

#### *Effect on Other Rulings:*

HQ 961888, dated August 3, 1998, is revoked.

JOHN DURANT,  
Director,  
Commercial Rulings Division.

## MODIFICATION OF RULING LETTER AND TREATMENT CONCERNING COUNTRY OF ORIGIN OF PAINT BRUSHES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of country of origin ruling letter and treatment of certain paint brushes.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the origin of certain paint brushes and any treatment previously accorded by Customs to substantially identical transactions. Notice of this proposed revocation was published in Vol. 33, No. 42, of the CUSTOMS BULLETIN, dated October 20, 1999.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after February 14, 2000.

FOR FURTHER INFORMATION CONTACT: Marjorie Cole, Special Classification and Marking Branch, Office of Regulations and Rulings (202) 927-2334.

### SUPPLEMENTARY INFORMATION:

#### BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements.

Pursuant to Customs obligations, a notice was published on October 20, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 42, proposing to modify New York ruling (NY) D83257, dated October 20, 1998, in which certain paint brushes were determined to be of Chinese origin. Upon further review and consideration of this matter, we determined that China is not the origin of this merchandise. The notice stated Customs intention to modify NY D83257 and find the origin of the paint brushes to be Holland. No comments were received in response to that notice.

As stated in the proposed notice, this modification action will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. §1625(c)(2)), Customs is modifying any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable case on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended (19 U.S.C. §1625(c)), Customs is modifying NY D83257 to reflect the proper origin of the paint brushes. HQ 561279, modifying NY D83257, is set forth as the Attachment to this document. This notice covers any rulings on this merchandise which may exist but have not been specifically identified. Additionally, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is modifying any treatment previously accorded by Customs to substantially identical transactions.

Dated: November 30, 1999.

JOHN E. ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

[Attachment]

## [ATTACHMENT]

DEPARTMENT OF THE TREASURY

U.S. CUSTOMS SERVICE,

Washington, DC, November 30, 1999.

CLA-02 RR:CR:SM 561279 MFC

Category: Classification

PHILIP YALE SIMONS, ESQ.  
SIMONS & WISKIN  
90 West Street  
10th floor  
New York, NY 10006

Re: Modification of NY D83257; country of origin determination of imported paint brushes; substantial transformation.

DEAR MR. SIMONS:

This is in response to your letter dated January 29, 1999, on behalf of Golden Mermaid, Inc. ("Golden Mermaid"), which requests reconsideration of New York Ruling Letter (NY) D83257, dated October 20, 1998, regarding the country of origin of paint brushes imported from Holland. You submitted additional information by letter of September 21, 1999, in response to our inquiry.

*Facts:*

Your client imports paint brushes from Holland. The paint brushes are comprised of brushes made of Chinese hog bristles, wooden handles made in Germany, and ferrules either made in Italy of metal or in Holland of plastic. You state that the Chinese bristles imported into Holland are raw bristles which have not been pre-treated in any manner.

The bristles are shipped from China to Holland packed in cardboard rings of approximately four inches in diameter. In Holland, a complicated, multi-step manufacturing operation produces the brushes to be imported by Golden Mermaid. You assert that the process used by Golden Mermaid is significantly different from those used by its competitors.

In Holland, the Chinese bristles are removed from their cardboard rings and placed in a machine which mixes and blends the bristles to achieve a blend which works best with solvent and water-based paints. When placing the different varieties of bristles into the blending machine, the machine operator visually inspects the bristles and manually aligns all of the bristles so that the ends are lined up in the same direction. Bristles that are not aligned are removed and replaced. After the bristles are blended, they are allowed to settle in order for the static electricity produced during the blending operation to dissipate.

A small hole is drilled in the handles and the handle is painted with the manufacturer's bar code and other brand and size information. The Golden Mermaid logo is attached to the end of the handle with adhesive.

For each size of brush, a specific weight of bristles is measured by machine and placed into a specifically designed device which gives the brush a unique shape. This process allows the natural ends of the bristles to remain intact, which distinguishes it from other manufacturing processes in which the ends of the bristles are cut and shaved to give the brush its shape.

The other end of the bristles, which is to become the ferrule end, is trimmed or shaved so that all the bristles are of an equal length. The shaved end of the bristles is placed into a ferrule, with the ends of the bristles inserted to the same depth. A core is placed between the bristles to separate them which enhances capillary action to draw the paint onto the brush. Epoxy is forced into the open end of the ferrule which sets the bristles. Before the epoxy sets, a brush handle is inserted into the ferrule. The brush handle for flat brushes has been cut into a dovetail shape which forms a connection with the epoxy that, unlike the traditional method used to produce paint brushes, leaves no void within the ferrule. After the epoxy sets, the brushes are inspected, packaged, and boxed for shipment.

In NY D83257, the Port of New York determined the origin of the imported paint brushes to be China based on the origin of the bristles.

*Issues:*

What is the country of origin of the finished paint brushes?



### Law and Analysis:

The marking statute, section 304, Tariff Act of 1930, as amended (19 U.S.C. §1304), provides that, unless excepted, every article of foreign origin (or its container) imported into the U.S. shall be marked in a conspicuous place as legibly, indelibly and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the U.S. the English name of the country of origin of the article.

Congressional intent in enacting 19 U.S.C. §1304 was "that the ultimate purchaser should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the ultimate purchaser may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will." *United States v. Friedlaender & Co. Inc.*, 27 CCPA 297, 302 (1940).

Part 134, Customs Regulations (19 CFR Part 134) implements the country of origin marking requirements and exceptions of 19 U.S.C. §1304. Section 134.1(b), Customs Regulations (19 CFR §134.1(b)), defines country of origin as "the country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the country of origin within the meaning of [the marking laws and regulations] \* \* \*."

A substantial transformation is said to have occurred when an article emerges from a manufacturing process with a name, character, or use which differs from the original material subjected to the process. *U.S. v. Gibson-Thomsen Co., Inc.*, 27 C.C.P.A. 267 (C.A.D. 98) (1940); *Texas Instruments v. United States*, 681 F.2d 778, 782 (CCPA 1982).

In *Gibson-Thomsen*, the court held that imported wood brush block and toothbrush handles into which U.S.-origin bristles were inserted in the U.S. lost their identity as handles and became new articles having a new name, character, and use. The court looked at whether the imported article lost its identity when combined with other articles and concluded that wood handles were mere materials to be used in the manufacture of toothbrushes and hairbrushes in the U.S. The court found that the ultimate purchaser of the wood brush blocks and toothbrush handles was the manufacturer and that the blocks and handles were substantially transformed during the manufacture so that they were no longer required to be marked. Therefore, the court concluded that a mere material to be used in the manufacture of a new article in the U.S. having a new name, character, and use, and which became an integral part of the new article would not be required to be marked.

In Headquarters Ruling Letter ("HQ") 733199 (July 19, 1990), bristles attached to metal ferrules were imported from China into the Philippines where they were attached to brush handles of Philippine origin. The bristle heads were trimmed so that the bristles were level and cleaned to remove any loose bristles. The Philippine origin handles were then attached to the bristle heads and ferrules. The ruling distinguished *Gibson-Thomsen* as that case examined whether the handles were substantially transformed after being inserted with bristles. The ruling held that the bristles were the very essence of the paint brush and did not become a new article having a new name, character or use, and therefore the origin of the paint brush remained the same as the origin of the bristles, China. The ruling noted that the bristles were substantially finished prior to arriving in the Philippines and required only trimming and cleaning prior to attachment of the handle in the Philippines.

In NY D83257, like in HQ 733199, it was determined that the bristles are the very essence of the finished paint brush and do not become a new article having a new name, character or use when combined with the handle and ferrule in Holland. That ruling determined that the processing which takes place in Holland does not effect a substantial transformation.

We disagree. We find that HQ 733199 is distinguishable from the facts of this case. In HQ 733199, the Chinese-origin bristles imported into the Philippines were already attached and set into the ferrules. It was only necessary to trim and clean the bristles and then attach the bristle heads to the handles. However, in this case, raw, untreated hog bristles of Chinese origin are imported into Holland in bulk where they are blended, aligned, trimmed on the ferrule end, measured by weight for each size brush, inserted into the ferrule and permanently set within the ferrule by means of epoxy. The handle is then attached to the ferrule. In their condition as imported into Holland, the raw bristles are not dedicated to



use solely as paint brush heads but have other potential uses.<sup>1</sup> Unlike the bristle heads involved in HQ 733199, the raw bristles involved in this case cannot be said to represent the "very essence" of the finished paint brushes. Thus, we find that the bristles and other components imported into Holland are substantially transformed when processed into finished paint brushes. Accordingly, the country of origin of the paint brushes is Holland and they must be so marked.

*Holding:*

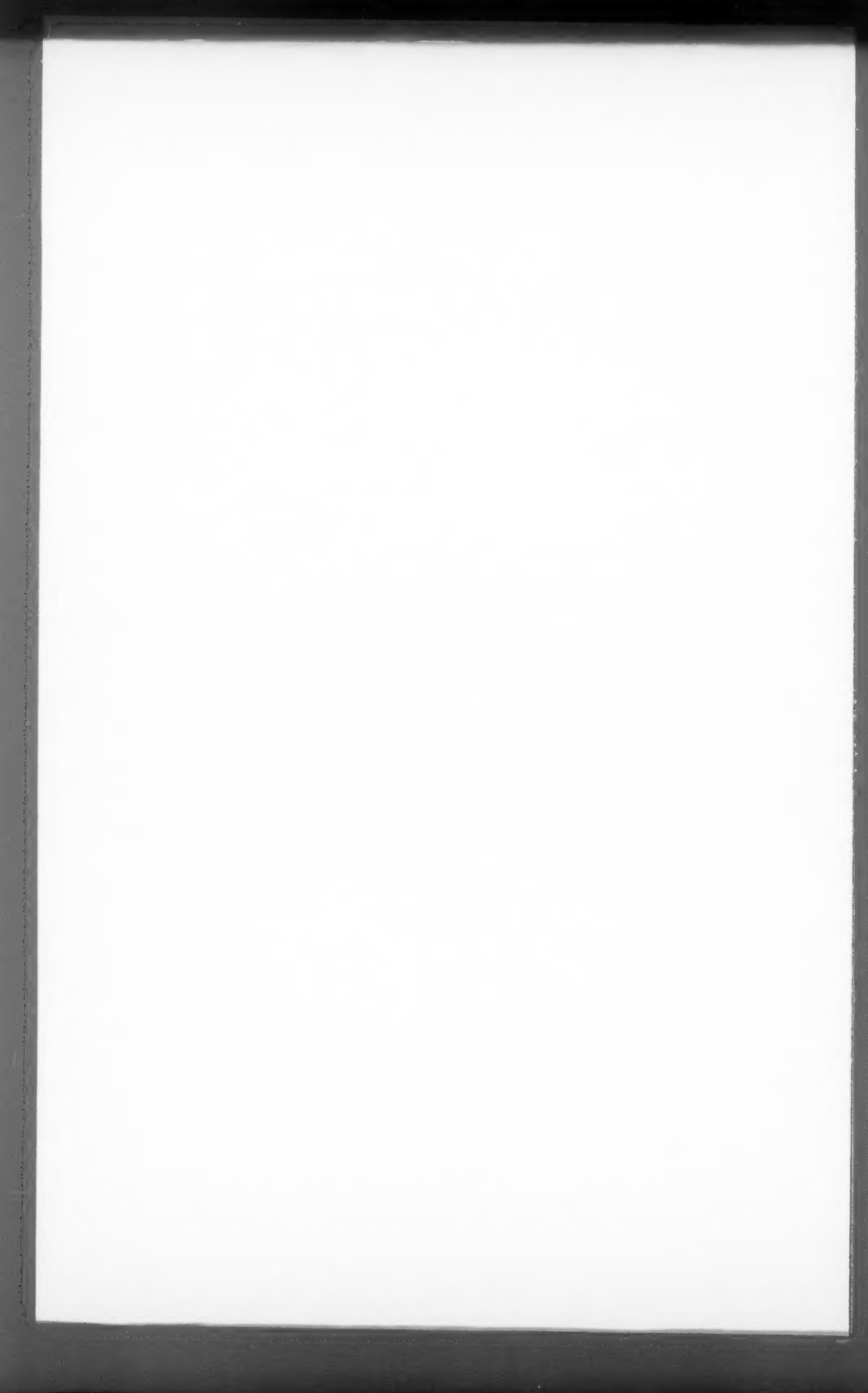
The Chinese-origin bristles are substantially transformed by the processing in Holland. Accordingly, the country of origin of the finished paint brushes is Holland.

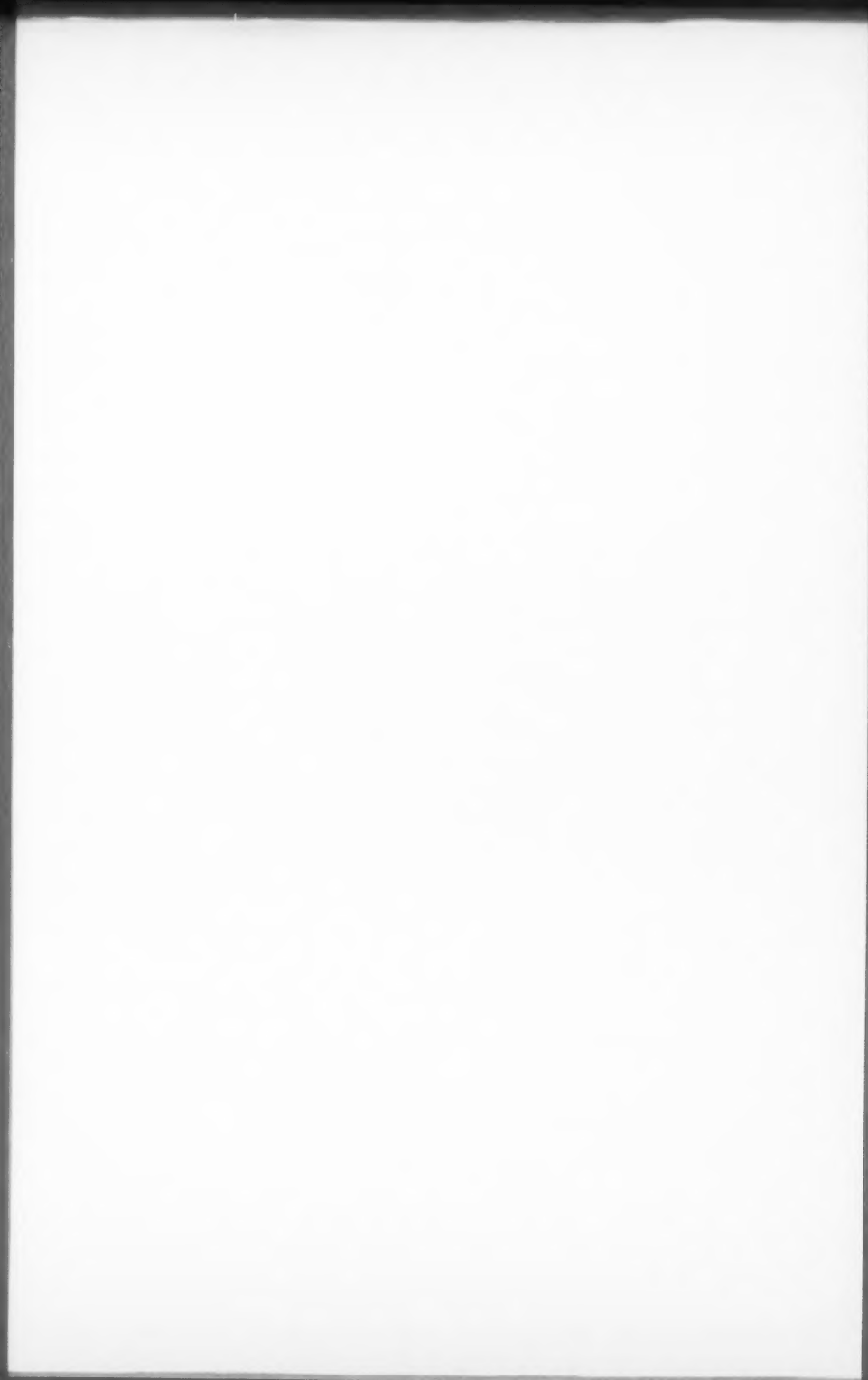
NY D83257 is hereby modified. In accordance with 19 U.S.C. §1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

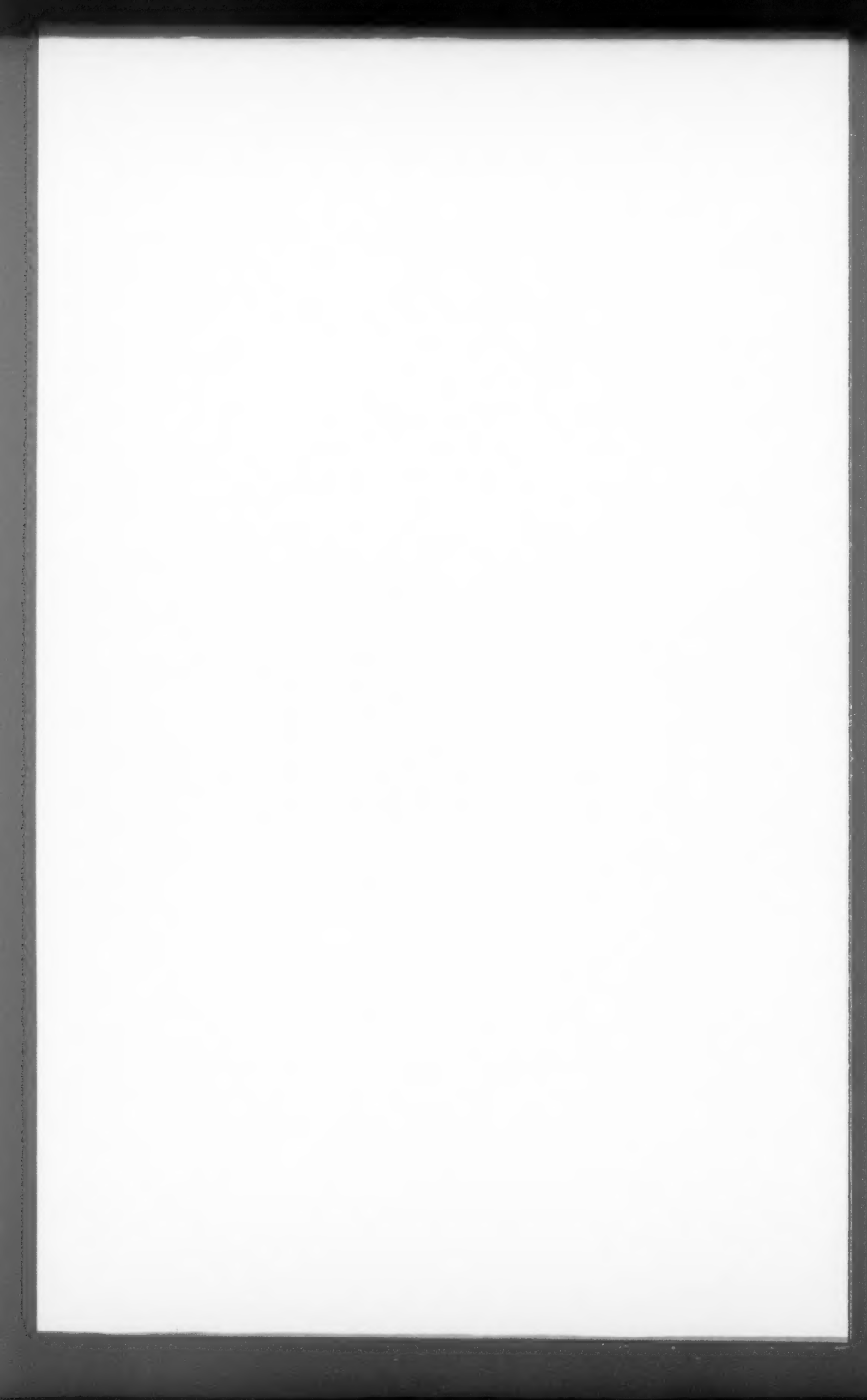
JOHN E. ELKINS,  
(for John Durant, Director,  
Commercial Rulings Division.)

---

<sup>1</sup> In your supplemental response to our inquiry, you indicated that in addition to being used in a variety of brushes, such as hairbrushes, cosmetic brushes, and in specialized brushes for non-painting applications, hog bristles may also be used as stuffing in upholstery, a source of fertilizer, and a source of certain amino acids.







# Index

*Customs Bulletin and Decisions*  
Vol. 33, No. 50, December 15, 1999

## U.S. Customs Service

### Treasury Decisions

	T.D. No.	Page
Export certificates for lamb meat subject to tariff-rate quota; 19 CFR Parts 132 and 163; RIN 1515-AC54 .....	99-87	1
Foreign currencies:		
Daily rates for countries not on quarterly list for November 1999 .....	99-89	13
Variances from quarterly rates for November 1999 .....	99-90	22
Import restrictions imposed on certain Khmer stone archaeological material of the Kingdom of Cambodia; 19 CFR Part 12; RIN 1515-AC52 .....	99-88	6

### General Notices

#### **CUSTOMS RULINGS LETTERS AND TREATMENT**

	Page
Tariff classification:	
Modification:	
Paint brushes .....	35
Proposed modification and revocation:	
Dutiability of spare parts under the vessel repair statute; withdrawal .....	23
Proposed revocation:	
Signal generators .....	24



Federal Recycling Program  
Printed on Recycled Paper

U.S. G.P.O. 1999-461-850-80063

